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Twenty-first session
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IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Written statement submitted by the Centro de Estudios Legales y Sociales (CELS) (Argentina) and the International Federation of Human Rights (FIDH), non-governmental organizations in special consultative status with the Economic and Social Council

The Secretary-General has received the following written statement, which is distributed in accordance with Economic and Social Council resolution 1988/4.

[21 October 1999]

Introduction

1. This statement is a summary of the main areas in which the Government of Argentina has failed to fulfil its duty to enforce economic, social and cultural rights, on the occasion of the evaluation of its second periodic report by the Committee on Economic, Social and Cultural Rights.

I. GENERAL

Lack of concrete, up-to-date information

2. The organizations submitting this statement acknowledge that the Government of Argentina submitted the report in time, but cannot fail to note the absence of information in the Government's document.

3. It is clear from the report that the Government opted for an extremely legalistic approach, based on lists of laws, decrees and decisions, thus preventing the Committee from gaining a clear idea of the extent to which the rights laid down in the legislation are enforced and of the actual economic and social situation in the country.

4. Considering, moreover, the fact that the report was submitted in June 1997, the data it contains are clearly out of date; recent official statistics in the public domain were omitted, and in some cases the Committee was even given information dating from the 1980s. In cases where the report indicates that it was not possible to collect better data, it even fails to state what specific steps were taken.

5. The list of Government plans and programmes is also incomplete in that it fails to include a brief analysis of the situation being addressed, the number of people affected, the assessed budget, the number of beneficiaries and a brief evaluation of their effects.

6. This is a key issue for the Government of Argentina, as the Committee, on considering its previous report, noted "the absence of specific information necessary in order to ascertain whether economic, social and cultural rights are being respected in Argentina, both collectively and individually". 1/

Unequal distribution of wealth

7. Although Argentina is usually held up as an example of the success of the economic reform models, the situation of large sectors of the population shows how these processes can cause significant setbacks in the effective enjoyment of economic, social and cultural rights, and reinforce a deeply divided and unjust society.

8. It is a well-known fact that in recent years Latin America has become a laboratory for studying the "shrinking of the welfare State", or "structural adjustment". This refers to a set of policies intended to dismantle the standard institutions of a welfare State system. Argentina is a model case where these processes are concerned.

9. These policies have had a definite impact on the distribution of income. According to official data, in May 1999 a person belonging to the wealthiest decile of the population earned 25 times more than a person from the poorest decile. Two years ago the figure was 23, nine years ago 15 and at the beginning of the 1980s, 8. 2/ There are two societies living in Argentina today: one with income similar to that of the first world and another with wages like those of Asia and Africa.

10. In Argentina one fifth of the population appropriates 53 per cent of the income.

11. Added to this are an unemployment rate of 14.5 per cent and an underemployment rate of 4.8 per cent. 3/ In addition, 37.6 per cent of the employed population performs clandestine labour 4/ and is therefore without social security, severence pay, accident insurance, access to health coverage or unemployment insurance.

12. But apart from the difference in distribution of wealth by social class and labour sector, the impact of the adjustment varies according to region of the country.

13. While Buenos Aires has a per capita income of $25,654 per year, the figure for the province of Santiago del Estero is only $2,308 per year, representing an 11 to 1 difference between areas of the same country.

14. While in Buenos Aires the infant mortality figures are barely below those of the moderately developed countries (13.1 per thousand), the figures for Chaco are similar to the national average of 20 years ago and approximate the levels of the poorest countries of Africa (32.8 per thousand).

15. Similar differences are found in access to education. While the total drop-out rate for primary school is 2.1 per cent, the figures for the provinces of Formosa, Corrientes and Misiones are three times as much, or 6 per cent. 5/

16. This differential also applies to certain sectors of the population.

17. There has been a marked feminization of poverty in Argentina, which is directly linked to the gender inequalities in the distribution of economic power. The crisis in basic health conditions has had a particularly adverse impact on reproductive health; 80 per cent of cases of maternal mortality in Argentina are due to avoidable causes. 6/ There has also been an alarming increase in reported cases of AIDS among women, 7/ making women a vulnerable group.

18. In recent years a discriminatory attitude has arisen towards immigrants from neighbouring countries, who are blamed for unemployment and crime. Because proceedings are costly, immigrants face bureaucratic and economic obstacles in regularizing their situation. The administrative authorities enjoy excessively broad discretionary powers. Expulsions are not conducted in accordance with due process, and immigrants are frequently victims of

arbitrary detentions and police brutality. Immigrants from neighbouring countries also face labour exploitation, compounded by the obstacles placed in their way when they seek to regularize their situation.

19. The indigenous population of Argentina is estimated at approximately 900,000 persons belonging to 18 indigenous peoples, i.e. 1.5 per cent of the total population of the country and 17 to 25 per cent 8/ in some provinces. These persons have traditionally lived in conditions of extreme poverty. Their ancestral lands have been laid waste by irrational use of the environment, which is jeopardizing their sources of livelihood. In addition, their areas have the highest indices of acute infectious diseases such as tuberculosis, Chagas disease, parasites and cholera.

20. Other sectors of the society bear a disproportionate share of the consequences of this process: disabled persons have growing difficulties in joining the competitive labour market. Another problem is the fact that the privatized companies, in particular those responsible for basic transport services, ignore their requests for minimum accessibility to transport, while at the same time the State is relinquishing its essential monitoring function.

Setback in enforcement of rights

21. The "relaxation" of the rules governing the labour market is a key element in this new scenario. The following have occurred since 1991:

(i) New types of labour contracts have been established, "promoted" through the reduction or elimination of social security costs;

(ii) The old "labour accident" scheme was eliminated, preventing workers from obtaining full compensation for injury, while responsibility for the control of safety and health at work was delegated to private companies;

(iii) Mechanisms were adopted to "privatize" justice in the workplace by adding obligatory extrajudicial conciliation procedures;

(iv) The traditional privilege of collection of workers' claims was amended in the legislation governing tenders and bankruptcy; collective agreements were suspended for undertakings in liquidation and the joint liability for labour debts of the buyer of an enterprise in liquidation was eliminated;

(v) Severance pay was reduced;

(vi) The system of collective labour agreements was amended, eliminating the wage adjustment clauses and linking future pay rises to productivity increases.

22. Thus labour rights have become more precarious, basically through two mechanisms: (a) the requirements of an obviously regressive body of legislation, which derogated from or placed conditions on some labour rights and restricted the scope of others; (b) legal authorization to negotiate and

conclude collective labour agreements "downward" in areas where this formerly could not be done. Both of these mechanisms were instituted against a backdrop of high unemployment and weakening of the trade unions.

23. In the area of social security, the legislation has been restricting rights since 1993, limiting the total retirement premium in terms of economic circumstances. As a result of this process the readjustment of the retirement benefit has been linked to the existence of available resources in the system, the Social Security Solidarity Act has granted the Government the power to argue lack of resources to avoid paying claims for readjustment of the retirement benefit and, finally, the Government is able to stay the enforcement of judgements against it until it has the economic resources to pay for them.

24. Regarding the right to health, it should be mentioned that the national Government decentralized responsibilities and transferred them to the provincial Governments. This step has had drastic consequences for health care, as responsibility for health promotion and health care have been transferred to the provinces while the required resources have not been transferred from the central administration budget. On the basis of the regional differences referred to earlier, it can be seen that the decentralization process did nothing but accentuate the existing inequalities in access to health care. Loss of employment, undeclared employment and an increase in the number of the working poor have also helped to turn the weakened public health system into the main system responsible for the people's medical care. According to official data, 58.2 per cent of the population has only the public hospitals for their health coverage. 9/

25. These legislative reforms are of a regressive stamp and have caused a drastic setback in the degree of enforcement of economic, social and cultural rights.

III. CONCLUSIONS

26. The economic reform process in Argentina in the 1990s resulted in the dismantling of the standard institutions of the welfare State. The process was characterized by a severe setback in the degree of enforcement of economic, social and cultural rights and by the emergence of a society of inequality, in which the few earn wages while huge sectors of the population are abandoned by the Government and subjected to increasing social exclusion.

This paper is an adjusted summary of a report submitted to the secretariat, hence we urge the members of the Committee, in conducting its analysis, to refer to the report and its executive summary (in English and Spanish), which explain our concerns in greater detail.

Notes

1/ E/1995/22-E/C.12/1994/20, para. 224.

2/ Ongoing Household Survey. INDEC, 2nd quarter 1999.

3/ Ibid.

4/ Unrecorded employment. Percentage of wage-earners for whom the individual share of social security is not paid, for each urban centre. Aggregate figure for the provinces. October 1998. Ministry of Labour and Social Security.

5/ Federal Department of Education.

6/ Ministry of Health and Social Welfare, 1992.

7/ In 1990 there were 417 cases of AIDS among men and 62 among women; in 1997 the figure was 1,545 for men and 424 for women.

8/ According to data prepared by non-Government sources, due to the absence of official information.

9/ Data supplied by the Information, Monitoring and Evaluation System for Social Programmes.

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COMMITTEE ON ECONOMIC, SOCIAL
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Agenda item 6

CONSIDERATION OF REPORTS

Joint written statement submitted by FIAN - FoodFirst Information and Action Network, Habitat International Coalition, International Federation of Human Rights Leagues and International Federation Terre des Hommes, non-governmental organizations in special consultative status with the Economic and Social Council, and by Casa y Ciudad AC-Coalición México, member of Habitat International Coalition, Centre for Reflection and Labour Action (CEREAL), DECA Equipo Pueblo, Defence for the Right to Health, FIAN Mexican Section, Forum of Civil Organizations for Democracy, Frente por el Derecho a Alimentarse (FDA), Human Rights Centre "Miguel Augustin Pro Juárez" (PRODH), Mexican Collective in Support of Children (COMEXANI), Mexican Commission for the Defence and Promotion of Human Rights (CMDPDHAC), Mexican League for the Defence of Human Rights (LIMEDDH), National Network of Human Rights NGOs "All Rights for All" and Youth Network for Sexual and Reproductive Rights (ELIGE)

The Secretary-General has received the following written statement, which is distributed in accordance with Economic and Social Council resolution 1988/4

[18 November 1999]

Situation of economic, social and cultural rights in Mexico

1. This document was prepared by a coalition of 91 Mexican NGOs, within the framework of the examination of the third periodic report (1992-1996) of the Government of Mexico (E/1994/104/Add.18) by the United Nations Committee on Economic, Social and Cultural Rights. This document represents a collective effort brought about by our concern for the increasing and systematic nature of human rights violations in Mexico, reflected in the United Nations Human Rights Committee's recent observations in connection with the situation in Mexico (CCPR/C/79/Add.109).

2. Our country is experiencing a serious downturn in the general living conditions of increasing numbers of Mexicans. This is largely a result of the structural adjustment policies implemented during the past 17 years which prioritize macroeconomic market indicators over the welfare of the population. This deterioration has become more accentuated since the North American Free Trade Agreement (NAFTA) entered into force in 1994. Such policies have proven incompatible with the spirit and letter of the International Covenant on Economic, Social and Cultural Rights, and deepen the economic and social inequalities that exist amongst the population.

3. The narrowly focused national poverty-alleviation programmes which have been favoured over the past few years are selective, short term, and function as mere palliatives rather than addressing the structural causes of poverty. These programmes, for instance the Programme for Education, Health and Nutrition (PROGRESA), referred to by the Mexican Government in its third periodic report to the Committee, are used for political and electoral ends, heightening discrimination and hindering the construction of a truly democratic political system which is vital for social development.

4. Mexico's rural population is most intensely affected by such factors, in particular the more than 10 million indigenous Mexicans. For years, institutionalized violence in Chiapas has been reflected in the systematic nature of human rights violations and the impunity which inevitably follows. The armed conflict which started in 1994 aggravated this situation, and serves as a warning about the conditions in which indigenous peoples and campesinos throughout the country survive. It is unacceptable that several of the Mexican states richest in natural and cultural resources (including Chiapas, Guerrero, Oaxaca and Veracruz) register the highest levels of poverty and marginalization in the country.

5. The Mexican Government's economic and social policies have a marked gender bias to the detriment of women, whose burden of labour, as well as discrimination against them in various spheres, is increased. It is not enough for the Government to recognize the increasing feminization of poverty. Policies must be redefined from a perspective that integrates women as fully fledged actors, with specific needs and capabilities.

6. The following figures illustrate these concerns.

Poverty and income

7. According to official figures from the Ministry for Social Development, in 1996 there were 40 million poor people in Mexico, of whom 26 million were living in conditions of extreme poverty. In 1994, the official figure was 17 million extremely poor people. In other words, the number of people living in such conditions increased by 9 million in just two years.

8. According to figures from the Colegio de México, the number of poor people living in the country in 1994 was 61.7 million, of whom 36.2 million lived in conditions of extreme poverty. In 1996 these figures had increased to 72.2 million poor, of whom 50.9 million were extremely poor. In other words, an increase of 15 million in two years, according to this non-official figure.

9. Salaries lost an accumulated 47.6 per cent of their purchasing power between December 1994 and August 1999. In 1999 the daily minimum wage goes from US$ 3.13 to US$ 3.63 per day (29.7-34.5 pesos) at different geographical areas in Mexico, when the constitutional basic food basket costs around 285 pesos per day.

Work

10. Unemployment rose from 819,000 individuals to 1,354,700 between 1993 and 1996.

11. Mexico requires around 1.2 million new jobs each year in order to meet employment demand, but in 1998 just 750, 000 new jobs were created and only 40 per cent were permanent posts.

Gender discrimination

12. The Mexican Institute of Social Security (IMSS) and Mexican Petroleum (PEMEX), amongst other federal and state governmental institutions, as well as 56 assembly plants (maquiladoras) throughout the country, request medical certification that potential employees are not pregnant, and dismiss employees for pregnancy.

Children

13. In 1995, 13,373 minors were reported to be living and working on the streets of Mexico City. UNICEF statistics indicate that today's figure would be nearer to 20,000.

Food

14. Social assistance programmes to combat malnutrition have not reached rural areas, where 58 per cent of children under five demonstrate physical and mental problems as a result of poor nutrition. In indigenous areas 73.6 per cent of under-fives show some degree of malnutrition, the same proportion as 22 years ago.

15. In 1996, three years after the signing of NAFTA, an unprecedented quantity of basic food grains (more than 12 million tonnes) was imported by Mexico. This reflects Mexico's dependency on food exports as well as discouraging the campesino agricultural sector.

Health

16. In 1993, 59 per cent of the total number of people without access to health services were women.

17. In 1994, the number of abortions in Mexico was approximately 1.7 million, of which some 50 per cent were induced, which reflects both the lack of access to sexual and reproductive health information and health services for Mexican women. The fourth highest cause of death amongst women in Mexico is abortion.

18. In 1998 there were at least 260,511 people infected with HIV/AIDS in Mexico, of whom approximately 49 per cent lacked access to health services.

19. Figures from the Second National Health Survey of 1994, carried out by the Ministry for Health, show that in the north of the country the rate of hospitalization is 41.3 inhabitants per 1,000, while in the south-east and Gulf regions it is 17.7 per 1,000. In Mexico City the rate is 31.6 per 1,000 inhabitants. The incidence of infectious diseases, malnutrition and reproductive health problems is 2.2 times higher for people who inhabit rural areas than for those who live in urban areas.

Social security

20. In 1996, the total number of people covered by social security was less than a third of the working economically active population, and only 16.7 per cent of the rural population had access to the social security system.

21. The reforms to the Mexican Institute of Social Security Act, approved in 1995, represent a clear step back in terms of respect for economic, social and cultural rights. By privatizing the pension scheme, they destroy the previous system of intergenerational support between workers and affect the rights acquired by workers, for instance to a retirement pension, severance pay and old-age pension after 500 weeks' work; the new law requires 1,250 weeks.

Education

22. In 1993, 13.6 per cent of the adult female population was illiterate compared with 8.9 per cent of the adult male population, and the number of women students was 6 per cent less than that of men.

Housing

23. In 1995 there was a shortage of adequate housing in Mexico of 4.6 million homes: more than 3.5 million required significant improvements to the structure, materials or services, while 1.1 million needed to be replaced by new homes. These figures do not include the need for 780,000 to 850,000 new homes each year.

24. Outside of urban areas, 5.5 million homes lack piped water, 5.6 million are not connected to the street drainage system and almost 1 million lack electricity. Indigenous communities are the most affected.

25. Between January 1997 and June 1999 a total of 39,500 families were evicted from their living places in repossessions, natural disasters or by landlords.

26. The financial policy regarding the purchasing of public housing excludes more than 40 per cent of Mexican families who do not fulfil the requirement of earning three times the minimum wage. Between 60 and 70 per cent of the population build their own housing without government support.

Public spending

27. The national budget is allocated in such a way as to favour military spending (which was 272.4 per cent greater than that allocated to the Ministry for Social Development in 1994, and in 1999 was four times the total sum spent for poverty alleviation programmes) or the bank-rescue package (the 1998 budget for the Ministry for Social Development represents just 3.5 per cent of the total amount spent this year on rescuing private banks, through the Banking Fund for Protection of Savings, FOBAPROA).

The situation in Chiapas

28. Of 96 per cent of the municipalities in Chiapas, 34.23 per cent have extremely high levels of poverty, 50.45 per cent are considered to suffer high poverty levels and 10.81 per cent medium levels. Chiapas is the state with the highest number of municipalities with extremely high levels of poverty.

29. In 1997 the number of military officers stationed in Chiapas rose to 65,100 of a total of 182,328 nation-wide. In other words, one of every three military officers is stationed in Chiapas.

30. In Chiapas there is one medical doctor for every 1,178 inhabitants, which is less than half the national average. In the conflict zone there is less than 1 doctor per 18,900 inhabitants.

31. Chiapas is in first place in the country in terms of reported cases of cholera, diarrhoea and deaths due to tuberculosis.

32. In Chiapas 30.12 per cent of the population is illiterate, almost three times the national average. This situation is typical of regions with a high indigenous and/or rural population.

33. Between 1994 and November 1998, there were approximately 21,159 displaced persons in Chiapas, which represents about 4,063 indigenous families.

Conclusions and recommendations

34. We believe that the Mexican Government's third periodic report precludes the Committee on Economic, Social and Cultural Rights from effectively evaluating progress made towards compliance with the International Covenant on Economic, Social and Cultural Rights.

35. It is worrying that the Mexican Government has not responded satisfactorily to the observations and recommendations made by the Committee on Economic, Social and Cultural Rights in connection with the second periodic report (E/C.12/1993/16). The examination of the Government's third report by this Committee resulted in questions, observations and recommendations that are of vital importance for the construction of the conditions necessary to ensure full respect for economic, social and cultural rights, as well as human rights more generally in Mexico.

36. As members of non-governmental organizations working in areas related to these rights, we ask the Committee to take into account the information and concerns presented in our alternative report, in order to call on the Mexican Government to implement the following recommendations:

(a) To reduce military spending and prioritize a real increase in social spending, in particular in the areas of health, education and social security;

(b) To enshrine the right to food in the national Constitution;

(c) To review the reservation made at the time of signing the International Covenant on Economic, Social and Cultural Rights in connection with article 8, regarding the rights to unionize, to union freedom and to strike. These rights are enshrined in the Constitution as well as in the corresponding regulatory laws;

(d) To promote administrative measures and legislative reforms to implement free, universal and secret ballots in union elections;

(e) To promote a wage policy that guarantees compliance with article 90 of the Federal Work Act, stipulating that the minimum wage should be sufficient to satisfy the normal needs of an average family (in size and socio-cultural terms) and to provide compulsory education for the children;

(f) To ratify International Labour Organization Conventions Nos. 98, 138 and 158;

(g) To establish within the Federal Work Act the prohibition against demanding medical certification of non-pregnancy from prospective employees and the sanctioning of employers who fail to comply;

(h) To reform paragraph B of article 102 of the Constitution in order to grant the state and federal governmental Human Rights Commissions competence to investigate labour issues;

(i) To adopt adequate security measures to allow for the safe return of the displaced population in Chiapas.